



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

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Contact Person:

Identification Number:

Telephone Number:

Employer Identification Number:

UIL Number:

507.01-00
4941.00-00
4944.00-00
4945.00-00

Legend:

T =
B =
C =
D =
E =
F =
G =
H =
M =

Dear _____ :

This is in response to your ruling request regarding the proper treatment of a transfer of all of your net assets to another private foundation under sections 501, 507, 4941, 4944, and 4945 of the Internal Revenue Code ("Code").

Facts:

You are an irrevocable charitable trust that is recognized as an organization described in section 501(c)(3) of the Code and classified as a private foundation under section 509(a). B, who is deceased, created you to provide private donations for religious, charitable, scientific, literary and educational purposes within the United States. T is also an irrevocable trust that is recognized as tax-exempt under section 501(c)(3) and classified as a private foundation under section 509(a). C created T to make private donations for charitable, educational and scientific purposes within M. The five co-trustees are D, E, F, G, and H, and they are also the sons of the late B, and the grandsons of the late C.

Since your purposes are similar to T's, the trustees wish to save time, eliminate duplicated efforts and reduce the costs of operating two trusts through the merger of you into T. Having just one trust, T, remaining will allow a single focal point for grant requests and will allow for more available funds for donations in furtherance of the entities' exempt purpose. The Attorney General of the State of M represents the unspecified charitable interest of you and T pursuant to M Statutes. The trustees have filed on yours and T's behalf a joint petition in a local District Court of M.

The Court approved the transfer of all the assets from you to T and the merger of you into T subject to certain changes in the terms and provisions of T and the obtaining of a favorable private letter ruling from our office authorizing the transfer of assets from you to T without any penalty. The changes to the terms and provisions of T that are required by the Court include having at least 75% of all the donations made by the surviving entity distributed to charitable organizations with principal offices or base of operations within the State of M. Also, the total trustees' fees paid to all trustees for the administration and operation of T shall not in any fiscal year exceed .5% of the total value of the assets owned by T on the first day of the fiscal year.

You represented that you and T are effectively controlled by the same persons and that the trustees have agreed to make the above described changes to the terms of T required by the Court order. Furthermore, you maintain that neither organization is an operating foundation or has any excess business holdings within the meaning of sections 4942(j)(3) and 4943 of the Code. In addition, you state that neither organization has any obligation to exercise expenditure responsibility over outstanding grants pursuant to section 4945. Finally, you state that the Service has not notified either organization of any tax imposed by section 507(c) due to any willful or flagrant acts or failures to act.

Rulings Requested:

You have requested the following rulings:

1. Your transfer constitutes a transfer of assets from one private foundation to another private foundation pursuant to a plan of liquidation or merger under section 507(b)(2) of the Code, and consequently, T will not be treated as a newly created organization
2. Your transfer of assets to T will not terminate your private foundation status and will not result in tax imposed by section 507(c).
3. T will succeed to your aggregate tax benefit pursuant to section 1.507-3(a)(2)(i) of the Income Tax Regulations ("regulations").
4. Your transfer of assets to T and your merger into T does not constitute an act of self-dealing pursuant to section 4941.
5. Your transfer of assets to T does not constitute a jeopardizing investment within the meaning of section 4944.

6. Your transfer of assets to I does not constitute a taxable expenditure within the meaning of section 4945(d).
7. Your transfer of assets to I will not adversely affect either organization's tax-exempt status under section 501(c)(3).
8. Your termination after the transfer described above, which will occur pursuant to notification of termination under section 507(a)(1), will not result in any tax liability under section 507(c).

Law:

Section 501(c)(3) of the Code provides an exemption from federal tax for organizations that are organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary, or educational purposes, no part of the net earnings of which inures to the benefit of any private shareholder or individual.

Section 507(a)(1) of the Code states that a private foundation may voluntarily terminate its private foundation status by submitting to the Internal Revenue Service a statement of its intention to voluntarily terminate its private foundation status pursuant to section 507(a)(1) and by paying any termination tax under section 507(c).

Section 507(b)(2) of the Code states that when one private foundation transfers assets to one or more other private foundations pursuant to liquidation, merger, redemption, recapitalization, or other adjustment, organization or reorganization, then each transferee private foundation shall not be treated as a newly created organization.

Section 507(c) of the Code imposes an excise tax equal to the lower of: (1) the aggregate tax benefits that have resulted from the private foundation's exempt status under section 501(c)(3), or (2) the value of the net assets of the private foundation on an organization that voluntarily terminates its private foundation status.

Section 4941(a) of the Code imposes an excise tax on acts of self-dealing between a private foundation and any of its disqualified persons as defined in section 4946.

Section 4944(a) of the Code imposes a tax on any investment that jeopardizes an exempt organization's charitable purpose.

Section 4945 of the Code imposes a tax on any "taxable expenditure" (as defined in section 4945(d)) made by a private foundation.

Section 4945(d)(4) defines the term "taxable expenditure" to include any amount paid or incurred as a grant to a private non-operating foundation unless the grantor foundation exercises expenditure responsibility with respect to such grant in accordance with section 4945(h).

Section 4945(h) provides that the expenditure responsibility referred to in section 4945(d)(4) means a private foundation is responsible to exert all reasonable efforts and to establish

adequate procedures to: (1) see the grant is spent solely for the purpose for which made, (2) obtain full and complete reports from the grantee on how the funds are spent, and (3) make full and detailed reports with respect to such expenditures to the Secretary.

Section 1.507-3(a)(1) of the regulations states that in the case of a significant disposition of assets to one or more private foundations, within the meaning of paragraph (c) which describes a section 507(b)(2) of the Code transfer, the transferee organization shall not be treated as a newly created organization, but shall succeed to those attributes and characteristics of the transferor organization described in section 1.507-3(a)(2), (3), and (4), which include its aggregate tax benefit, substantial contributors, and chapter 42 tax and penalty liabilities.

Section 1.507-3(a)(2)(i) of the regulations states that a transferee organization to which this paragraph applies shall succeed to the aggregate tax benefit of the transferor organization in an amount determined as follows: Such amount shall be an amount equal to the amount of such aggregate tax benefit multiplied by a fraction the numerator of which is the fair market value of the assets (less encumbrances) transferred to such transferee and the denominator of which is the fair market value of the assets of the transferor (less encumbrances) immediately before the transfer. Fair market value shall be determined as of the time of transfer.

Section 1.507-3(a)(2)(ii) of the regulations states that notwithstanding subdivision (i) of the subparagraph, a transferee organization which is not effectively controlled (within the meaning of section 1.482-1(a)(3)), directly or indirectly, by the same person or persons who effectively control the transferor organization shall not succeed to an aggregate tax benefit in excess of the fair market value of the assets transferred at the time of the transfer.

Section 1.507-3(a)(3) of the regulations states that, for purposes of section 507(d)(2), in the event of a transfer of assets described in section 507(b)(2), any person who is a "substantial contributor" (within the meaning of section 507(d)(2)) with respect to the transferor foundation will be treated as a "substantial contributor" with respect to the transferee foundation, regardless of whether such person meets the \$5,000-two percent test with respect to the transferee organization at any time.

Section 1.507-3(a)(4) of the regulations states that if a private foundation incurs a liability for one or more of the taxes imposed under chapter 42 (or any penalty resulting therefrom) prior to, or as a result of, making a transfer of assets described in section 507(b)(2) to one or more private foundations, in any case where transferee liability applies, each transferee foundation shall be treated as receiving the transferred assets subject to such liability to the extent that the transferor foundation does not satisfy such liability.

Section 1.507-3(a)(5) of the regulations states that, except as provided in subparagraph (9) of this paragraph, a private foundation is required to meet the distribution requirements of section 4942 for any taxable year in which it makes a section 507(b)(2) transfer of all or part of its net assets to another private foundation.

Section 1.507-3(a)(7) states that, except as provided in section 1.507-3(a)(9), where the transferor has disposed of all of its assets, during any period in which the transferor has no assets, section 4945(d)(4) and (h) shall not apply to the transferee of the transferor with respect

to any expenditure responsibility grants made by the transferor. However, the information reporting requirements under section 4945 will apply for any year in which such transfer is made.

Section 1.507-3(a)(9)(i) provides that if a private foundation transfers all of its net assets to one or more private foundations that are effectively controlled, directly or indirectly, by the same person or persons that effectively controlled the transferor private foundation, the transferee private foundation will be treated as if it were the transferor private foundation for purposes of sections 4940 through 4948 and sections 507 through 509. However, where proportionality is appropriate, such a transferee foundation shall be treated as if it were the transferor in the proportion which the fair market value of the assets (less encumbrances) transferred to such transferee bears to the fair market value of the assets (less encumbrance) of the transferor immediately before the transfer.

Section 1.507-3(a)(9)(iii), Example 2, states that if the transferees of a section 507(b)(2) transfer are effectively controlled by the same persons who control the transferor, each transferee is required to exercise expenditure responsibility with respect to the transferor's outstanding grants, unless, as part the transfer, the transferor assigns and one or more transferees assume the transferor's expenditure responsibility, in which case, only the transferees assuming the transferor's expenditure responsibility are required to exercise expenditure responsibility. Also, because such transferee foundations are treated as the transferor, rather than as recipients of expenditure responsibility grants, there are no expenditure responsibility requirements which must be exercised under 4945(d)(4) and (h) with respect to the section 507(b)(2) transfer.

Section 1.507-3(c)(1) of the regulations states that a transfer of assets is described in section 507(b)(2) if it is made by a private foundation to another private foundation pursuant to any liquidation, merger, redemption, recapitalization, or other adjustment, organization, or reorganization.

Section 1.507-3(c)(2) of the regulations defines the term "significant disposition of assets to one or more private foundations" as any disposition or series of dispositions where the cumulative total of dispositions is 25 percent or more of the fair market value of the net assets of the foundation at the beginning of the taxable year.

Section 1.507-4(b) of the regulations states that private foundations that make transfers described in section 507(b)(2) are not subject to the tax imposed under section 507(c) with respect to such transfers unless the provisions of section 507(a) become applicable.

Section 53.4946-1(a)(8) of the Foundation and Similar Excise Tax Regulations ("regulations") states that, for purposes of section 4941 of the Code only, the term "disqualified person" shall not include any organization which is described in section 501(c)(3) (other than an organization described in section 509(a)(4)).

Rev. Rul. 2002-28, 2002-1 C.B. 941, rules on the implications of section 507(b)(2) transfers under sections 4940, 4941, 4942, 4943, 4944, and 4945 for private foundations in various situations.

Analysis:

Ruling 1:

Section 507(b)(2) of the Code describes a transfer from one private foundation to another private foundation according to any liquidation, merger, redemption, recapitalization, or other adjustment, organization, or reorganization. Section 1.507-3(c)(1) of the regulations describes the terms "other adjustment, organization, or reorganization" as including any partial liquidation or any other significant distribution of assets to one or more private foundations, other than transfers for full and adequate consideration or distributions out of current income. The term "significant disposition of assets to one or more private foundations" is defined by section 1.507-3(c)(2) as any disposition or series of dispositions where the aggregate value transferred is 25 percent or more of the fair market value of the net assets of the foundation at the beginning of the taxable year. Since you are transferring all of your net assets to I, a private foundation, for less than full and adequate consideration, your proposed transfer is a significant disposition of assets that qualifies as a transfer under section 507(b)(2). When a private foundation makes a transfer described in section 507(b)(2) of the Code, the transferee foundation is not treated as a newly created organization under section 1.507-3(a)(1) of the regulations. Therefore, because your transfer is described in section 507(b)(2), I will not be treated as a newly created organization.

Rulings 2 and 8:

Pursuant to section 1.507-4(b) of the regulations, a private foundation that makes a transfer described in section 507(b)(2) of the Code is not subject to the tax imposed under section 507(c) with respect to such transfer unless the provisions of section 507(a) become applicable. As discussed in Ruling 1 above, your transfer will constitute a significant distribution of assets described in section 507(b)(2). You stated that the Secretary has not notified you of any tax imposed by section 507(c) due to any willful or flagrant acts or failures to act. Therefore, your proposed transfer of assets to I under section 507(b)(2) will not terminate your private foundation status under section 507(a) and does not result in a termination tax imposed by section 507(c). Thereafter, the voluntary termination of your private foundation status will be a taxable event within the meaning of section 507(a)(1). However, no tax will be due under section 507(c) since you will have no assets at the time of the voluntary termination.

Ruling 3:

In the case of a significant disposition of assets to one or more private foundations within the meaning of section 507(b)(2) of the Code, the transferee organization shall be treated as possessing those attributes and characteristics of the transferor organization which are described in subparagraphs (2), (3), and (4) of section 1.507-3(a) of the regulations. As discussed in Ruling 1 above, your transfer is described in section 507(b)(2).

Section 1.507-3(a)(2) states, in part, that a transferee organization to which this paragraph applies shall succeed to the aggregate tax benefit of the transferor organization. However, section 1.507-3(a)(2)(ii) states, in part, that a transferee organization that is not effectively controlled, directly or indirectly, by the same person or persons who effectively control the

transferor organization shall not succeed to an aggregate tax benefit in excess of the fair market value of the assets transferred at the time of transfer. You represent that the same person or persons do effectively control you and T. Therefore, T will succeed to your aggregate tax benefit in an amount determined by the ratio described in the regulations, not in excess of the fair market value of the transferred assets at the time of transfer.

Accordingly, T will be treated as possessing your attributes and characteristics as described and within the limitations of sections 1.507-3(a)(2), (3), and (4) of the regulations.

Ruling 4:

Section 4941(a) of the Code imposes an excise tax on each act of self-dealing between a disqualified person and a private foundation. Sections 4941 and 1.507-3(a) of the regulations determine whether the proposed transfer of all of your assets to T will constitute an act of self-dealing between a private foundation and its disqualified persons, as defined in section 4946. Under section 53.4946-1(a)(8) of the foundation regulations, a "disqualified person" does not include organizations that are exempt under section 501(c)(3). Your transfer of assets to T is not an act of self-dealing because T is recognized by the Service as an organization exempt from tax under section 501(c)(3).

Rulings 5 and 7:

Section 4944 of the Code imposes a tax on any investment that jeopardizes an exempt organization's charitable purpose. Since your transfer of assets are to further charitable purposes and because, T is exempt under section 501(c)(3), the transfer will not adversely affect either your or T's exempt status, nor will it be treated as a jeopardizing investment within the meaning of section 4944. See Rev. Rul. 2002-28, supra.

Ruling 6:

While a section 507(b)(2) transfer is a grant for which expenditure responsibility ordinarily must be exercised, section 1.507-3(a)(7) provides generally that section 4945(d)(4) and (h) shall not apply with respect to any grants made by the grantor during any period in which the grantor has no assets, except for information reporting on Form 990-PF in the year of the transfer. Moreover, because you will transfer all your assets to T, which you represent are effectively controlled, directly or indirectly, by the same persons that effectively control you, T will be treated as if it were you. Since T will be treated as if it were you, rather than as recipients of expenditure responsibility grants, there will be no expenditure responsibility requirements that must be exercised under section 4945(d)(4) or (h) with respect to your transfers to T. See Rev. Rul. 2002-28, supra.

Conclusion:

Based on the foregoing, we rule as follows:

1. Your transfer constitutes a transfer of assets from one private foundation to another private foundation pursuant to a plan of liquidation or merger under section 507(b)(2) of the Code, and consequently, I will not be treated as a newly created organization.
2. Your transfer will not terminate your private foundation status and will not result in tax imposed by section 507(c).
3. I will succeed to your aggregate tax benefit pursuant to section 1.507-3(a)(2)(i) of the regulations so long as the aggregate tax benefit is not in excess of the fair market value of the assets transferred at the time of the transfer.
4. Your transfer of assets to I does not constitute an act of self-dealing pursuant to section 4941.
5. Your transfer of assets to I does not constitute a jeopardizing investment within the meaning of section 4944.
6. Your transfer of assets to I does not constitute a taxable expenditure within the meaning of section 4945(d), assuming that you meet your expenditure responsibility information reporting requirements on Form 990-PF for the year of the transfer.
7. Your transfer of assets to I will not adversely affect either organization's tax-exempt status under section 501(c)(3).
8. Your termination after the transfer described above, which will occur pursuant to notification of termination under section 507(a)(1), will not result in any tax liability under section 507(c).

This ruling will be made available for public inspection under section 6110 of the Code after certain deletions of identifying information are made. For details, see enclosed Notice 437, *Notice of Intention to Disclose*. A copy of this ruling with deletions that we intend to make available for public inspection is attached to Notice 437. If you disagree with our proposed deletions, you should follow the instructions in Notice 437.

This ruling is directed only to the organization that requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited by others as precedent.

This ruling is based on the understanding there will be no material changes in the facts upon which it is based. Any changes that may have a bearing upon your tax status should be reported to the Service. This ruling does not address the applicability of any section of the Code or regulations to the facts submitted other than with respect to the sections described.

Because this letter could help resolve any future questions about tax consequences of your activities, you should keep a copy of this ruling in your permanent records.

If you have any questions about this ruling, please contact the person whose name and telephone number are shown in the heading of this letter.

In accordance with the Power of Attorney and Declaration of Representative currently on file with the Service, we are sending a copy of this letter to your authorized representative.

Sincerely,

Michael Seto
Manager EO Technical
Exempt Organizations